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ROYAL COMMISSION ON MATTERS OF HEALTH AND SAFETY
ARISING FROM THE USE OF ASBESTOS IN ONTARIO

CHAIRMAN: J. STEFAN DUPRE, Ph.D.

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APPEARANCES:

Miss L. Jolley


Ontario Federation of Labour

Mr. T. Lederer

Government of Ontario

180 Dundas Street
Toronto, Ontario
Tuesday,
June 22, 1982
Afternoon Session

VOLUME 43 B



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VOLUME 43 B

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THE FURTHER PROCEEDINGS OF THIS INQUIRY
RESUMED PURSUANT TO RECESS

APPEARANCES AS HERETOFORE NOTED

DR. DUPRE: Ready?

MR. LASKIN: We are ready, Mr. Chairman.

DR. DUPRE: It's my pleasure now to welcome Mr.
Jim McNair, for some time the director of the industrial health
and safety branch of the Ministry of Labour, and presently, as
I understand it, in central investigation in the occupational
health and safety division.

You are most welcome, Mr. McNair.

May I ask you to come forward and be sworn?

JAMES McNAIR, SWORN

EXAMINATION-IN-CHIEF BY MR. LASKIN

Q. Now, Mr. McNair, you are, as I understand it,
a graduate of civil engineering from the University of Glasgow?

A. No. I am a civil engineer by apprenticeship
and examination by the Institute of Civil Engineers. I am a
member of the Institute of Civil Engineers, a member of the

A. (cont'd.) Association of Professional
Engineers of Ontario.

Q. I see. Do you have some education from Glasgow?

A. Yes. Royal Technical College in Glasgow.

Q. I see.

A. Which is now the University of Strathclyde,
I believe.

Q. When did you first become employed by the
Ontario government?

A. 1957.

Q. At that time you were, as I understand it, an
engineer with the engineering services branch?

A. Engineering services section...I don't think
it was a branch at the time...with the factory inspection branch.

Q. All right. And within which ministry?

A. Labour, Ministry of Labour. I have been with
the Ministry of Labour since 1957 to today.

Q. I see.

Then, as I understand it, in 1962 you moved to
the construction safety branch as head of the branch?

A. I moved to start it.

Q. You actually started the branch?

A. Yes.

Q. And were, I take it, its first chief?

A. I was its first person.

Q. When you started it, did it have any staff
under it, or were you it?

A. No, I was it at the beginning, but then we
recruited the staff, and amongst the first three that we recruited
was an Italian-speaking officer, for Dr. Dupre's information.

Q. And then did you change branches some time
later on?

A. On May 1st, 1970, I was made the director of the industrial safety branch.

Q. And you remained in that position for how long?

A. Until August 1st, 1976, when I moved to the labour services staff branch as senior safety advisor. Then I went back to the industrial health and safety branch as director on April 26, 1977.

And on April 6th of this year, I was appointed the ADM/staff.

Q. All right.

DR. DUPRE: May I ask, Mr. McNair, you moved into the industrial safety branch in 1970, had that branch been around for a long time at the time you...?

THE WITNESS: Oh, the name changed, but this is the original branch of the ministry, from which everything flowed.

DR. DUPRE: I see.

THE WITNESS: You know, they called it under various names - COMSA inspection, factory inspection. It became the industrial safety branch, I think, in 1964, when they passed the first Industrial Safety Act, 1964. That's when that name came up.

MR. LASKIN: Q. Which branch was handling construction projects prior to 1962?

THE WITNESS: A. The municipalities were handling that. Even until 1973, the principal inspections were done by municipalities, in the construction field.

Q. I see. The front line inspection was done by municipalities?

A. Right.

Q. And you provided, what, a backup...

A. Backup and ...

Q. ...and monitoring service?

A. Yes, and assistance in every way.

Q. I see. And then in 1973, I take it there was a shift?

A. Yeah. The shift was to provincial enforcement, in 1973.

Q. Okay. Did that come about as a result of some Commission of Inquiry recommendation?

A. I'm not sure about that. I wasn't there.

Q. Okay. I take it that that change coincided with the passage of the Construction Safety Act, about 1973?

A. Right.

Q. Are municipal inspection forces used at all? Were they used at all, either in construction or in the industrial side, after 1973, in your experience?

A. No, no.

Q. Not at all?

A. Not at all. No, it was provincial enforcement.

Q. Okay. What happened to all the inspectors in the municipalities? Did the government, provincial government hire them up?

A. Some of them were recruited and some went back to their building departments.

Q. I see.

Now, you have been with the Ministry of Labour since 1957. Can I ask you when, from your perspective and from the positions you were fulfilling, asbestos first was seen as a problem at the workplace?

A. I would say about the third day of my employment in the ministry. I had the good fortune to start on the first day of the annual meeting of the Ministry of Labour factory inspection branch, at that time, and I think on the third day, I think the occupational...at that time I think it was called the environment health protection branch of the

A. (cont'd.) Ministry of Health...put on their seminar for the inspectors.

5 So I think about the third day of my...right at the beginning of me becoming involved. This was an annual feature and had been for some time.

Q. Were you alerted to the fact that asbestos was a potential health hazard problem both in the fixed work site and in the nonfixed work site?

10 A. I think at that time my recollection is that asbestosis was the problem, and that was essentially where there was large-scale exposures.

Q. And therefore, I take it, at fixed sites over a period of time?

15 A. Yes.

Q. All right. Do I then draw from your evidence, Mr. McNair, number one, that at that time cancers weren't seen as a problem, and number two, nonfixed site workplaces were not seen as a problem?

20 A. You can take it that I didn't see cancer as a problem.

Now, our health advisors...I don't know the extent they thought it was a problem, but I wasn't aware of it, I know that.

Q. No one told you about it? No one told you about any problem?

25 A. I said I wasn't aware of it.

Q. Yes. All right.

Did you at some stage during the course of your duties receive any information, advice, from your health branch that made you aware of further problems relating to asbestos?

30 A. Oh, yes. Yes.

Q. When, and what was the nature of the information

Q. (cont'd.) communicated to you?

5 A. I believe 1961, I took a course which Charlie Mastromatteo gave, and he was with the health branch, and I think at that time there was some indication that cancers were perhaps a problem.

Q. Did the information you have or you received at that time have any effect on the manner in which you carried out your duties in respect of work sites, fixed or nonfixed, where asbestos was being used?

10 A. It became absolutely...

MR. LEDERER: Could I interrupt for one second? I think both Miss Jolley and I are having a little trouble hearing. I wonder if I could just ask Mr. McNair...

15 MR. LASKIN: Me, or Mr. McNair?

MR. LEDERER: Pardon me?

MR. LASKIN: Me or Mr. McNair?

MR. LEDERER: I can always hear you, John. It's Mr. McNair I'm having difficulty hearing, and I think Miss Jolley is having the same problem.

20 THE WITNESS: She has heard it before.

Now, one conclusion that I came to is that I didn't know anything about health things, and I would always seek the advice of those who did. That has proved to be a useful, and I think a proper, approach for any nonprofessional to take in this matter, that health matters are far too complicated for me to even peripherally understand.

25 But I think it was good that I had an awareness of the existence of a problem in the area, and that it was absolutely necessary that I call upon advice from other people.

30 Not only that, but I became thoroughly convinced the same should apply to the officers in the branch, that a little knowledge was a dangerous thing.

Q. That was my next question, and did that awareness get filtered down to your staff?

A. I think so.

Q. By you or by the branch holding the...

A. Oh, in the same mode as I have.

I think there's...the training, or shall we say the orientation of people takes place in both formal and informal ways. Formally we ran seminars...as I say, we had them every year... in which Hugh Nelson and Dr. Mastromatteo and the other doctors before them came and gave their information. But also, since we did call upon the Ministry of Health, we had the informal benefit of their discussions as we went to and fro to the various jobs and discussed it.

But all these, as I say, led to the clear conclusion that this was background information in the recognition portion of the recognition, evaluation and control exercise, and in a very front-line, first-contact effort.

Q. Can I ask you about one particular workplace, and that is the Johns-Manville plant out at Scarborough. Are you familiar with that plant?

A. I would hate to say that there is anybody in this world who is familiar with all of the elements of the Johns-Manville plant, in view of the number of reports that have been written on that thing, and the number of...and I know that you've already seen the file on it.

Q. Can you help me with your last comment? Can you elaborate on it?

A. Sure. There are a lot of reports and a lot of testing done by the Ministry of Health people, and it has been in the public view for a long time.

Q. All right.

A. So, I mean, I can try to answer as I'm sworn to, in truth, any particular thing you have.

Q. Okay. Well, did you visit the plant?

5 A. I have been on the premises twice. The first time I was in the board room with management and the union, accompanying the executive director of the division at the time, and the second time I went round the plant to familiarize myself and add to the information which we had.

Q. All right. When were these two occasions?

A. 1975.

10 Q. Okay. And both of them were in 1975?

A. Yes. One arose from the other. I would not go in on the day we were in the board room, until I came back to the office and examined the drawings of the ventilation system and the layout of the plant.

15 Q. You prompt me to ask you, Mr. McNair, what was the occasion that prompted your visit? Was it some particular incident or issue that prompted your visit?

A. Oh, yes. It was a matter of public issue at the time. I think it derived in part...let's see if I can remember...Scarborough Board of Public Health were involved in this. The Medical Officer of Health for Scarborough...

20 Q. Dr. Fitzgerald?

A. Yes. He...they got involved in some way, and we went out to collect the facts on the situation in Johns-Manville.

Q. What was the situation that you were...?

25 A. Seven years ago? I've got some notes, but I can't really ...no, sorry, I can't tell you just offhand what the particular issue was there.

Q. Are those some notes or documents you've got in front of you?

A. No, just a listing of what you got when you looked at the file.

30 DR. DUPRE: Could I just ask you this, Mr. McNair,

5 DR. DUPRE: (cont'd.) you were on the J-M premises twice in 1975. You had become the director of the industrial safety branch in 1970. Had you heard about the plant before you went there? Had any inspector ever had occasion to tell you anything about that plant?

THE WITNESS: We were inspecting that plant on a regular basis all through, and had been since it was built in 1948.

10 DR. DUPRE: And there was nothing about any inspection that ever caused that plant to be brought to your attention in your capacity as director?

THE WITNESS: The plant was one of sixty-five thousand-odd which are in existence in...

15 DR. DUPRE: Okay. That's what I'm trying to establish.

THE WITNESS: ...Ontario, and yes, as far as I was aware, our officers were doing the followup and following through any orders which they were recommended to by the occupational health branch of the Ministry of Health, in whatever name it happened to have at the time.

20 Now, that part I was aware of. I was aware also of the various tests which were done.

25 MR. LASKIN: Q. I suppose just to follow up on the Chairman's question, do I take it at least up until 1975, from the point of...and between 1970 and 1975, and to the extent your knowledge goes back before that, do I take it that from the inspection point of view the Johns-Manville plant at Scarborough wasn't being treated any differently, or being singled out for any particular attention?

30 THE WITNESS: A. Johns-Manville plant was treated from the same standpoint as all plants surveyed, but that means that because there was a particular problem it was

5 A. (cont'd.) one of the ones which went on short cycles. That priority was established by the system which was put into place about 1973, in the branch, after I had studied the layouts of the system they had.

Q. Tell me about that. What was the situation in terms of inspections prior to 1973, and then tell me what change you instituted.

10 A. When I went to the branch in 1970, they had just begun putting into operation the computer system which they had. That system was based on a fixed cycle, in which they had studied all the various industries and by the standard industrial classification code, they gave each industry in that particular code a fixed cycle of inspection.

15 This enabled, in some way, a sort of loose control of the inspectors' performance.

20 After I had reviewed that cycle, that system, in 1973, I came to the conclusion that this was not the way that the system should operate - it should operate on the basis of the capacity and the problems which existed in the individual plants, not in the industry as a whole. It's of little importance, it seemed to me, that we should be spending time in places which were conducting themselves in the way we would expect people to conduct themselves, and where there was good relationships, where everything was working, rather than spending our time more often in places where it wasn't working.

25 I was able to get support for that concept and to change to the flexible cycle of inspection, which is based on essentially the record of the company insofar as accidents are concerned, the record insofar as compliance is concerned, and the appreciation of our own officer as to the relationships which existed in the plant and how they complied with directions.

30 These four elements would make him adjust the cycle

5 A. (cont'd.) upwards and downwards, the objective being that he would arrive at the plant just before he would have to issue orders to comply with the law.

Q. What was the shortest cycle?

A. Three months.

Q. And the longest?

10 A. It could go to thirty-six months, but we developed another one for what we called general calls...that was later...an indeterminate cycle which we gave an assignation of ninety-nine.

Now that indeterminate cycle didn't mean we never did reinspect. It meant we reinspected them on assignment. We would get it printed out differently.

15 I think Mr. Doern...

Q. Deals with that.

A. ...he mentioned that, but he got it sort of ass backwards.

Q. He did?

A. Oh, yeah.

20 Q. What...?

A. He said there was no cycle...the idea being that we did not inspect them. That's not so. They were put into abeyance, but they were going to be programmed to come out when we wanted them. In other words, we called for them to come out.

25 Q. Is that the so-called ninety-nine month cycle that he referred to?

A. That's right. That's just...ninety-nine was just a number.

Q. I see. Okay.

30 Then as I noted his observation, it was that an inspector has decided that a company's accident-prevention record, or whatever, is sufficiently good that you are prepared

Q. (cont'd.) to delay for some indefinite period of time any further review?

5 A. What we were talking about was Mom and Dad smoke shops, where Mom was in one time and Dad was in later. These were the kind of places that went on ninety-nine.

We have printed them out and we did send students around to inspect these premises. These were the only ones we put on that cycle.

10 Q. What about J-M? What about the Johns-Manville plant in Scarborough? What cycle was it put on?

A. It varied from three to six months, but actually we were in much more often than that.

15 DR. DUPRE: Actually you were in more often than the cycle it was on, is that correct?

THE WITNESS: Yes.

DR. DUPRE: Why was this?

20 THE WITNESS: As a result of the inspection by the occupational health branch and their request for our orders, and also from the other elements of corrections, being ordered, following up on them.

25 MR. LASKIN: Q. In terms of the factors that you particularized before as determining the length of the cycle, which of those factors came into play in your assessment of how often to go into Johns-Manville?

THE WITNESS: A. All of it.

30 Q. In other words, was there some evidence of noncompliance?

A. Yes. Well, there was some evidence of incomplete compliance, that would be better, with the objectives. There were no problems with the health part of the activity, section 79 of the Regulations under the 1971 Act, which is identical to section 145 under the new Act. But we had as an objective to get

5 A. (cont'd.) conditions in the plant controlled by engineering means, but the Regulations said the alternative was respirators. So it was really almost a promotional deal.

Q. But I take it your branch was issuing orders from time to time at Johns-Manville?

A. That's right.

Q. Was there evidence that those orders were not being completely complied with?

10 I'm not asking specifically, I'm asking...

A. No, the orders would be complied with, but not in the way that we wanted them done.

15 In other words, one way of complying with the order in respect to health was to wear respirators, so there was actually compliance. But that wasn't the objective of the action. The objective of the action was to get ventilation which would control it without the use of respirators.

Q. I see. So what action, if any, did that prompt on behalf of your inspectorate?

20 A. We went out and promoted with the health people that they should go with improving the ventilation system.

As you know, they've put in a ventilation system, I think in 1961, a pretty large ventilation system, and maintaining it in proper shape so as to exhaust the material properly was quite a problem.

25 We were not satisfied with respirators as the final solution, just as the new regulation suggests. But it was not part of the law at that time.

Q. I see. And your recollection is that the company is trying to comply with section 79 of the Regulation by the use of respirators...

30 A. In part, yes. They were also able to get the levels, the changing levels, down below, in time.

5 Q. How did the cycle of inspections that Johns-Manville was on compare to the inspection cycle that other asbestos-manufacturing operations were on, in Ontario?

A. I think the larger plants were all on relatively short cycles.

Q. Three months?

A. Three month, six month cycles.

10 DR. DUPRE: Would it be fair to say, Mr. McNair, of this period that a plant that used any substance for which a guideline existed would have always been on a relatively short cycle?

15 THE WITNESS: No, I wouldn't want to say that. I would say that depending on how they complied with it...for instance, there was little point in going down to Dupont....which had and has, you know, the reputation, justly so, of being really interested in the protection of their people....there was little point in going there on a three month cycle despite the fact that they have all the very elements of which you speak.

20 MR. LASKIN: Q. I take it this flexible cycle inspection system that you introduced is still the one that, to your knowledge, is prevalent within the ministry and is utilized...

THE WITNESS: A. That's right. Yes.

Q. You were here this...

25 DR. DUPRE: I would like to interject a question as this point.

30 I'm trying to, Mr. McNair, wrap my arms around the relationship between the industrial branch and the occupational health services. Now, as I would take it during the 1970's, what would have been going on in the case of a plant like Johns-Manville would be that the government air sampling would be conducted by the hygienists from the occupational health branch, which was then in the Ministry of Health. Is that correct?

THE WITNESS: That's correct.

5 DR. DUPRE: And they would..would they go in there and do that by themselves, or would they need to have an inspector from your branch accompany them and be there with them?

10 THE WITNESS: Since 1969, the relationship between the two branches has been the subject of an agreement. Harold Yuneyamo, who was the director some time before me, he and Dr. Mastromatteo got together and agreed as to the relative relationships. That memorandum agreement was updated in 1974, so that there was... this was how we get it and how many copies of reports and so on, and who will do what.

15 So it was agreed that we would...how we conduct ourself in relationship to each other...and they did the work in respect to health. They were our consultants in respect to health matters.

DR. DUPRE: Now, by that you mean in respect to, for example, the conduct of...well, the medical surveillance, presumably, they did themselves, right?

THE WITNESS: That's correct. Yes.

20 DR. DUPRE: Then the air monitoring, they did that themselves or were they consultants to you?

THE WITNESS: No, they did it and then reported to us.

25 DR. DUPRE: Okay. So on two counts then, on medical surveillance and on air monitoring, basically they did it and they communicated the results to you?

THE WITNESS: That's right.

DR. DUPRE: Now, if I can pursue what the division of labour then was, what did the industrial inspectors do?

30 THE WITNESS: If there was a recommendation for a direction to be issued, they would look and see whether there was any authority to issue that direction, or whether in fact a direction was not part of the legal system and all they could do would

THE WITNESS: (cont'd.) be to couch it in terms of a suggestion and recommend.

5 A copy of the OHB report, by the way, always went directly to the company, the basic idea being that they should get it as fast as possible so they could act upon it.

Nothing very complicated - no sinister plot - just a simple send-it-to-them-so-they-can-get-started-and-get-it-done, and then we would be in sometime afterwards to issue any necessary directions and have any discussions that seemed appropriate.

10 DR. DUPRE: Now, I'm just trying in my own slow way to follow this, because I'm putting together what you are saying at the moment, which coincides exactly with what Mr. Rajhans was telling us yesterday.

15 Okay, the occupational health people could give you a suggestion, for example in terms of the ventilation system in that plant?

THE WITNESS: Right.

20 DR. DUPRE: And then it would be your inspectors who would go in there to see whether the plant, which had received a copy of the occupational health suggestion, was following up on it?

THE WITNESS: Right.

DR. DUPRE: Good.

25 Now may I ask you, because you mentioned this a few minutes ago, may I ask you about the wearing of respirators?

Now, your inspectors would go in there to try to enforce a suggestion, for example, that might have come from the occupational health branch about the wearing of respirators when certain operations were taking place? Is this...?

30 THE WITNESS: The way...the health branch would not normally direct respirators. They would direct the engineering solution.

DR. DUPRE: Okay.

THE WITNESS: But the alternative way, sometimes they would say 'and respirators will be worn until such time as the concentrations are reduced to that level'.

DR. DUPRE: Okay.

THE WITNESS: Now, that could be followed up simply by asking questions and find out what the plans were and what was ahead at the time, but they would leave the order and it would then go into our followup system and be followed up by that, or else it would be followed up manually if there was some degree of urgency at the time.

DR. DUPRE: So now, just to make sure I'm beginning to grasp the full picture, probably one of the reasons why your inspectors were going into the J-M plant more often than every three to six months was because that plant was the subject of various reports, suggestions, from the occupational health branch, which you then went in to, or your people went in to follow up?

THE WITNESS: That's correct.

DR. DUPRE: Can I just ask you in terms of, again, trying to understand the nexus between the two branches...so your inspectors would go in to follow up?

THE WITNESS: That's correct.

DR. DUPRE: And they would then see whatever it was that they saw?

THE WITNESS: Yes.

DR. DUPRE: They had the power to do what? To issue some orders or directives to management?

THE WITNESS: Under the various sections that they had authority to do, yes.

DR. DUPRE: They had that authority?

THE WITNESS: Yes.

DR. DUPRE: And when such directives or orders were

DR. DUPRE: (cont'd.) issued, how was the occupational health branch kept aware that such directives and orders had been issued?

THE WITNESS: Anything that we issued, there was a little square on the report form which an X would be put, that a copy went to the health branch, of our report.

DR. DUPRE: Okay. So it really...

THE WITNESS: That was the system.

DR. DUPRE: ...it was very much of a two-way street?

THE WITNESS: I think so.

DR. DUPRE: And presumably it remains a two-way street to this day, in terms of...

THE WITNESS: It's even more so now, given that we are only a couple of floors above one another.

DR. DUPRE: Okay. Thank you.

Sorry, counsel.

MR. LASKIN: No, that's fine, Mr. Chairman.

MR. LASKIN: Q. Mr. Lederer has been kind enough to hand over his copy of the Industrial Safety Act, 1971, and I just want to make sure we are talking about the same section.

You have your own copy?

THE WITNESS: A. Yes.

Q. I take it...

A. 1979? It should be 1979. Yes.

Q. ...it's the general regulation and section 79?

A. Page 65 of the little book of our office consolidation.

Q. Yes. Section 79?

A. Right.

Q. Which says:

"All measures necessary to prevent exposure to any

5 Q. (cont'd.) "toxic substance by inhalation,
ingestion or skin contact shall be taken, and
without limiting the generality of the foregoing,
where any toxic substance is used or produced,
(a) the substance shall be isolated,
(b) adequate ventilation shall be provided,
(c) personal protective clothing or equipment shall
10 be worn or used,
(d) quick-acting deluge showers shall be provided, or
(e) eyewash fountains shall be provided."

A. Which is identical to section 145 of the
Regulations under the present Act.

15 DR. DUPRE: What you have just read is in the
Industrial Safety Act of 1971?

THE WITNESS: It's in the Regulations of the
Industrial...

MR. LASKIN: The Regulations.

DR. DUPRE: In the Regulations pursuant to that Act?

MR. LASKIN: Yes.

20 DR. DUPRE: Had that regulation had a prior existence
under the earlier legislation that preceded the Industrial Safety
Act, as well?

THE WITNESS: I can't answer that one.

Probably, but I don't think quite specifically like
that. I can't tell you.

25 I looked for a 1964 thing, and I couldn't find it.
But we can easily check.

DR. DUPRE: Yes.

30 THE WITNESS: These Regulations were very thoroughly
reviewed in public by the then Labour Safety Council of Ontario,
at which there were public hearings throughout the province, on
them. They were produced, essentially, in the branch and then
the draft was sent out for public comment....the Regulations were.

5 THE WITNESS: (cont'd.) So I guess that was possibly, you know, the first time that they went into this public review of regulations as far as the ministry is concerned.

MR. LASKIN: Q. Mr. McNair, I don't know whether we completed the questioning on 1975, but do you have any specific recollection of what incident or event triggered your personal attendance at the Johns-Manville plant?

10 THE WITNESS: A. Oh, I know exactly why I was there - because my boss told me to go. But I did read it in the file and it's not very...the information which is on file is not detailed.

Q. Now, the Chairman asked you and you indicated that you had received reports from the occupational health branch on, amongst other things, the air sampling measurements that that branch had taken, and so on. Is that right?

15 A. That's correct.

Q. Were you, at the same time, receiving any reports on measurements or sampling done by the company itself? By the company's own hygienist?

20 A. I don't think we got these. I think they had them available for us to access, and I'm not sure but I think they did go, copies were exchanged with the occupational health branch and its predecessor forum, because there were differences of opinion as to the results and they worked together to try and rationalize what was happening.

25 Q. I see. And then the reports that were then made available to you, did they contain the occupational health branch statistics, or the company's own statistics?

A. No, the occupational health branch reported to us and we acted on their advice.

30 Q. I see. And on their measurements?

A. Yes.

Q. During your tenure as head of the industrial

Q. (cont'd.) safety branch, was the principle of no-advance-warning or surprise, for inspections, followed?

5 A. Yes, right up to the present time that has been the situation, and despite perceptions which are abroad elsewhere. So, no advance warning that we were coming.

Q. Do you share Mr. Melinyshyn's observation that there is at least some perception out in the workplace that management in advance knew or knows of certain of your inspections?

10 A. I don't think I need to share it. It has been a matter of public record that this perception is there.

I have, on many occasions, challenged the person to produce the information, you know, from which we could conclude... we did that at one meeting in Hamilton, where the fellow gave us information and gave us...about the inspector he alleges came in, and the time within two or three months, and this fellow was off sick for three months during all that period he was supposed to have been in. So we were never able to check some...it's not something that bothers me unduly, you know, and again, it's a matter of public record so we may as well say it.

20 They said to me, they know they are coming. I said, what happened? They said, well, they cleaned it up and they made, you know, got everything ready so you couldn't find anything.

Gee, I said, I just found a new way of solving the problem. We'll phone him up every three weeks and tell him we are coming in.

25 But that wasn't appreciated. Nevertheless, what they forget is we do contact the union, we ask them and we would be told that something like this was happening, so there is no real significance.

30 Even just now, as Mr. Melinyshyn mentioned, we have been discussing with...we got into a discussion about this with the

5 A. (cont'd.) Ministry of Education, as to whether we should in fact tell people we are coming, in both union and management, and say to them - be prepared and have your documentation and everything reviewed and ready to go in.

So I don't think it's an issue which is really of any significance in the business of accident prevention. It may have a significance in perceptions and stuff like that.

10 Q. Under this flexible inspection cycle that you introduced, is the company made aware of the cycle...a particular company made aware of the particular cycle it is on?

15 A. It is made aware of the cycle it was on, to get the report which is coming. It does not have the cycle for the next inspection, unless it happens to be identical. And even if they do, remember we print out our stuff a month's supply at a time, so it could be anytime during the month which that three months has given, and a second point, that we do not keep up with the inspections.

20 In other words, the whole arrangement of inspections is based on an unbalanced work load, which means our officers are not able to do the month's inspection, as they call it, because it could very well be that the whole year's supply comes out in one month. So we are not going to do a year's work in one month.

Q. I'm sorry. I'm not understanding, Mr. McNair.

25 A. I think we should have got the video, that IAPA presentation.

30 It's not just the flexible cycle, but because of the flexibility, the changing cycles, they will not come out in twelve equal parts. They come out in more than a twelfth and less than a twelfth, which means that some are not going to be done during that current month, so they can say well, the last time I was on a six month cycle, they will be back in six months. But the inspector could have changed it to three months. He could also

5 A. (cont'd.) have changed it up the way, so it would be an exercise in futility if their objective was in some way to hornswoggle people.

Q. Or he could be so busy that notwithstanding it's a six month cycle, he may not get to it until the seventh month or eighth month?

A. That's right.

10 DR. DUPRE: Let me make sure I understand.

For a particular firm there are two sources of uncertainty, as I understand it, as to when an inspection is going to take place. The first is that even though it may know it has been on a particular cycle for some time, it doesn't know if it is all of a sudden going to wind up on a different cycle?

15 THE WITNESS: That is correct.

DR. DUPRE: Now, as I understand it, the second source of uncertainty is this: Even for a firm who knows what cycle it is on, so that it might expect because it's on the three month cycle to expect to be inspected every...to be inspected four times a year, it could in fact have two inspections that were two weeks apart?

20 THE WITNESS: Oh, no. No. Let's take it by month, and I think you'll get the handle on it better.

If we go in in January, because it was on a three month cycle, at that point if the cycle stays the same, the anticipation would be that we would be back in April.

25 But the cycle could change, which would make it not April. But if it was April, then it could be plus or minus four weeks.

DR. DUPRE: Okay.

30 THE WITNESS: Plus there is an additional factor that if they are behind, it may be more than four weeks.

But being a short cycle, as we have described, it

THE WITNESS: (cont'd.) would be one of the priority items.

5 So they don't know where in the four weeks that inspection would take place. So any chance of prearranging within plus or minus days is totally impossible.

MR. LASKIN: Q. Can I turn briefly to ask you a few questions about your branch's approach to infractions during the time that you were head of the industrial safety branch?

10 THE WITNESS: A. I presume that you have a copy of my presentation to the IAPA, and you have reviewed that Dr. Doern's thing, so we can talk from that information.

Q. We can certainly talk from Dr. Doern, and...

A. Well, he took it verbatim.

Q. All right.

15 Mr. Melinyshyn, when you were here this morning, produced to us that part of the industrial health and safety branch's operations manual dealing with potential prosecutions, and I suppose we should give it an exhibit number for our record.

Exhibit sixty, Linda.

20 EXHIBIT # 60: The abovementioned document was then produced and marked.

MR. LASKIN: Q. And I note the date on this, Mr. McNair, is February, 1982.

25 DR. DUPRE: You are referring to the document that Mr. Melinyshyn entered as an exhibit this morning on the prosecution policies?

MR. LASKIN: Yes.

DR. DUPRE: Thank you, counsel.

MR. LASKIN: Q. Now, are you familiar with exhibit sixty?

30 THE WITNESS: A. Yes.

5 Q. Does it represent the prosecution policy that was in existence in the industrial health and safety branch during the time that you were head of the branch?

A. In essence it does, yes. There are minor changes that are made from time to time, but essentially that's what it was.

10 Q. All right. Did you, then, follow the approach that prosecution would only be used as a last resort?

15 A. That's the one bit that bothers me about that latest version there. I think it gives a wrong impression. It's quite clear that prosecution is the last approach. I mean, I can't think of anything that would come after it. I don't know whether you can, but it seems to me that it's the end result.

20 That's all that was intended...I don't like the way that was worded, and I think I said that at the time, but it was all printed up when I was reviewing it.

The impression that somehow or other we were reluctant to prosecute is not the one that we wish to convey. There is no reluctance to prosecute. That reluctance does not exist.

25 But there are other tools ahead of that which can be used, and when you are prosecuting I think it's important that you create the atmosphere that the person who has been prosecuted leaves that courtroom feeling that he got himself there, that he was the author of his own misfortune, that had he conducted himself as a decent, responsible citizen he would not have been in the position he was in.

In other words, there is no persecution. There is prosecution.

30 Q. Then I take it consistent with that philosophy the policy would be to give, wherever reasonably possible, give the employer a chance to correct whatever infraction you were

Q. (cont'd.) complaining about?

5 A. Obviously, if you look at the number of orders which are issued and the number of prosecutions, it's quite clear that's a fact. The idea was, establish proof that they knew, I mean the actual individual we are dealing with, was aware that this law existed, with a particular reference to his problem.

10 If he quickly fixed it, it would not be fixed. (sic) And clearly, from the statistics which I'm sure you've seen in our annual reports, there is an astonishing compliance with these first orders.

Q. What's...can you give us the statistic comparable to the statistic Mr. Melinyshyn gave on the construction side as to the percentage of repeat orders in the industrial side?

15 A. Ten percent.

Q. Ten percent?

20 A. Ten point eight, down to nine point seven. A lot of these were, as I say, things which took time. If we ordered ventilation, we might reissue the order for ventilation even though the actual compliance had taken place by, I would say, the wearing of respirative protection.

Q. Is there any breakdown of that figure as between...

25 A. No, it's wrapped up in another grouping, unfortunately. The section is 145, but in the statistics that we have, the way we have set the computer up...

Q. That was my question.

30 A. ...again, you know, it could be obtained, but it would be, at the moment the system is not able to produce it by the computer, and you are talking about three thousand which are scattered throughout the year, throughout the province, throughout the whole reporting system.

That's one of the problems of a computer - once

A. (cont'd.) you've done it, it takes you a year, eighteen months, two years before you can change the way you do it.

I mean, get useful stuff out.

Q. I take it what you are saying is there is no breakdown as between health infractions and safety infractions?

A. No. Again, remember, the objective of the branch is to deal with these plants on a one-plant basis.

Q. Do you have any observation as to whether repeat orders are more frequent or less frequent in nonunionized as opposed to unionized work settings? Is that a factor?

A. I don't think so. No.

Q. No?

A. No.

MR. LASKIN: I don't think I have any more questions, Mr. Chairman.

DR. DUPRE: Thank you, counsel.

Maybe this is an appropriate moment to take a ten minute break or so. Come back at three-thirty?

MR. LASKIN: Sure.

THE INQUIRY RECESSED

THE INQUIRY RESUMED

DR. DUPRE: Miss Jolley?

CROSS-EXAMINATION BY MISS JOLLEY

Q. I would like to just start off with a question about 1975, because I think that there was more going on in 1975 than Dr. Fitzgerald raising the issue about Johns-Manville.

A. That was why we went out.

Q. Right. I think it was...

A. I knew that.

Q. ...a political issue in the legislature and it was certainly under debate at that point in time.

A. Well these things, as you know, usually occur simultaneously. There is a very good communication system.

Q. I'm wondering, just around the J-M plant, what communication did you have with the Workmen's Compensation Board, because at that time they were receiving a lot of claims. Was there communication back and forth?

A. Health matters were dealt with by the Ministry of Health people.

Q. So it would be just...

A. As they are now, the occupational health branch does now. All health forum surveys which come to us as copies don't come to the industrial branch. They go to the health people who do the analysis, and that was the same in these days.

If I remember right, I think Dr. Mastromatteo used to go down there every Friday and review the stuff with them. It was from them it came, the information about problems which were developing.

Q. I would like to refer to a comment you made about a sinister plot, about...

A. I beg your pardon?

Q. You referred to the fact that the ministry giving the hygiene surveys to management was not a sinister plot. Do you think that it would be important that those surveys be given to workers as well, directly?

A. Oh, absolutely. Surely. No, directly? Take that back. There is a question there. Yes. I'm sorry. I missed...you threw that one in just at the end as I was starting to answer.

No, I think a better way to do it is that the company should give the information to the union. In this way,

A. (cont'd.) the two people would at least be talking, if only to say hello, here's your copy of the report.

5 Secondly, if they don't get a copy of the report from management, the union could then contact me and we will then have information that this kind of communication between them, which should be taking place, in fact is not taking place.

10 So there are advantages to leaving it going through, but I know that there are a lot of the union people who have this sort of ego thing - I am entitled to it directly from the ministry - and they really...I think it's a good idea that this goes through the employer and that they in turn are required to give them it. In that way, the communication channel is at least open for one thing.

15 Now, if the communication channel is good, they get it anyway.

Q. With all due respect, I don't think it's just an ego. I think even Professor Ham indicated that we have a right in natural justice to have access to that.

20 A. They've got it. They have a right to get it, and they can get it. I am just suggesting that the mode is a matter which is open to debate and which is quite good...

25 Q. It depends also on the knowledge of the Act, and...which is sometimes a problem, that a lot of unorganized workers who are not trained don't know their rights and advantages under the law, and therefore don't know that they have a right to that kind of information from their management.

A. In unorganized, we have a different kind of a problem. We are talking about unionized plants. But I think it's a good idea to go this way.

30 Q. Well, I wasn't talking just about unionized plants.

DR. DUPRE: May I just, please, Miss Jolley...does

DR. DUPRE: (cont'd.) the employer have a legal obligation imposed upon him to give the information to the employee?

THE WITNESS: Since 1978, he has, yes.

DR. DUPRE: There is a legal obligation on the employer?

THE WITNESS: Yes. To give...I think the section is 'to the committee'.

DR. DUPRE: And that is the way it's formulated, is it?

THE WITNESS: Yes.

DR. DUPRE: Because the other way of formulating would be to say that the employees have the right to it.

THE WITNESS: Yes.

DR. DUPRE: It's formulated in such a way that the employer has an obligation...

THE WITNESS: Right.

DR. DUPRE: ...to give it to the employee.

Now, as I understand it from what...the discussion you were just having with Miss Jolley, if a union, or for that matter it could be an employee, has not received some information, they then inform the branch?

THE WITNESS: If they didn't receive it, they inform me or one of my administrators, who are now pretty well, you know, regionalized, they would pick up the phone to the company and say, look, we've been told this happened, you know, what's the problem.

Even things which are not a legal requirement, there's one little joker in the pack which is that I can give them it. I told Paul Folkowski this, you know, and several of the union people. I said, look, we want this to become part of your relationship in the internal responsibility, communicating with one another. Now, our job is to facilitate that communication.

5 THE WITNESS: (cont'd.) One of the ways we can do it is to talk to people and tell them, look, let's talk about this first of all as a decent relationship between people. Now, don't you think you should give them it, you know, being a good employer?

I mean, I'm still naive enough to feel that this is, you know, we live in a community where essentially we are decent folk.

10 But if they don't, some of the people have been rather reluctant, and I said, well, you know the position you are putting me into. They said, what's that? I said, well, I'll have to give them it, because they've got to get it and I have the authority to do it.

15 Now, wouldn't it be smarter instead of me giving it to them, you give it to them and pick up all the goodwill that's there involved, and usually that's what happens.

DR. DUPRE: What I'm trying to understand is this...but maybe I ought to put it in a very specific context... if you will excuse me for the time I am taking, Miss Jolley...

MISS JOLLEY: Yes.

20 DR. DUPRE: Okay, I take it as established that there is a legal obligation on the employer to share certain kinds of information with an employee or a union.

25 Now, does this legal obligation extend, for example, to air sample readings taken by the Ministry of Labour? Does the union or...sorry, does the employer have an obligation to communicate ministry samplings of air to the employees?

THE WITNESS: In my view, yes.

DR. DUPRE: Okay. So we've got that established.

30 Now, let us take a situation where, at this point, a union, let us say, does not get this information, and they communicate with you.

Now, as I take it, one of the things that you will

DR. DUPRE: (cont'd.) do at that point is ask the employer why he has not given that information, is that correct?

THE WITNESS: Certainly, yes.

DR. DUPRE: Okay. Now, at this point let's say nothing happens. What I want to find out is the following: Is the next step that you, namely the ministry, give that information to the union, or is the next step instead that you issue an order to the employer to communicate that information to the union?

THE WITNESS: I would probably do all three things at one time. In other words, I would get the copy of the document to a union person, I would pick up the phone to my administrator and say, you had better go in there and have a management consultation with these people, and at the same time issue an order for them to give it to them.

DR. DUPRE: I see.

THE WITNESS: And there I find out just what we've got going here. Maybe we need to bring in some help in the way of relationships here, which have been established. So all three things are done at one time.

DR. DUPRE: They are done all at one time.

THE WITNESS: It's a problem-solving exercise. It's not a semantic exercise. "Look, what's the problem? They want to know this stuff, let's get it done and then make sure the second generation doesn't happen." Then we'll know the next time that I don't have to do it. "But, let's get them the information, quick."

DR. DUPRE: Okay. I follow that, but to me it's not semantics, simply because what you were saying to Miss Jolley, which is based on your very considerable experience, when you were saying that you really like the idea of getting the employer to communicate directly to the employee, so at least they say hello

DR. DUPRE: (cont'd.) to each other when they exchange it...

5 THE WITNESS: And that has been the way it mostly is.

DR. DUPRE: Because, of course, when you hear that they haven't been giving it to them, you give it to the employee directly rather than saying to the employer, "Damn it all, within twenty-four hours, you give it", you are missing an opportunity for them at least to say hello within the twenty-four hours, when you do it?

10 THE WITNESS: You do a little talk and find out if we can get it done, and if we can get it done, you know, you keep up the ante until you find out when it moves. Then when it moves, that's good. But if it doesn't move, then again it shows that you've gone the steps to establish the kind of person you are dealing with, and they can't say you didn't speak to them. All the steps have gone, and you've gone more than your step, you are in a position to turn around and say, do it, here it is anyway.

15 And they can't turn around and say, what are you talking to me about this for? You say, well, I gave you a chance, I picked up the phone to you and talked to you.

20 It's being done. It's done regularly.

DR. DUPRE: Do you ever actually issue formal orders for an employer to communicate information to...

25 THE WITNESS: I wouldn't do the ordering. I would pass it on to my staff and say, get out there and do it.

DR. DUPRE: An inspector might issue such orders?

THE WITNESS: Yes.

DR. DUPRE: There might be repeat orders, as well?

30 THE WITNESS: No. No, I've never known of any repeat orders in these circumstances.

DR. DUPRE: On information, one order has done the trick, if it has had to be used at all?

5 THE WITNESS: Yes. Because it's followed...it's not just an order. When it gets to this stage, it becomes a management consultation where they sit down and say, hey, you've got a problem, let me tell you what clout the ministry has got behind it and just what you could be headed for.

As I say, people are not, despite some impressions, they are mostly reasonable.

DR. DUPRE: Thank you.

10 MISS JOLLEY: Q. I think my concern was not for the organized, because certainly we have been trying to educate our workers to know their rights under the law, and therefore to know their right to information from the employer, and they would be the first to call you if that would happen.

15 My concern is that the internal responsibility system, to operate, has to have labour given information, and the problem with unorganized workers is that they don't necessarily know their rights under the law, and it seems to me that that kind of tool might also be an educational tool as well.

THE WITNESS: A. A kind of what?

20 Q. An educational tool to raise the awareness of the unorganized work force about health problems.

A. That's exactly the point I was making, that by getting the company to give them the information, this is educating them in the right way to behave.

25 Q. But if they don't phone you to say that they haven't received the information...our experience in a lot of unorganized plants is that a lot of unorganized employers don't even know the Act, so they don't even know their obligation either.

Anyway, I won't belabour that. I just think it would be better to go directly to workers as well.

30 I would like to go back to the two reports that Mr. McCombie raised yesterday from Bendix, and I did xerox just

5 Q. (cont'd.) a couple of pages out of them. They are part of the UAW brief, but...yes, it's the 1966 report and the 1970 report, and I just...my understanding is that your branch would issue directives to...based on suggestions from the occupational health engineering branch.

In the 1966 report, from Mr. Nelson, on page two there are the directions to be issued. Number two:

10 "The operator shall wear a suitable, approved respirator for shaking the bags," and number three: "Housekeeping shall be improved in the brake lining shop. All settled dust shall be removed by vacuuming or wet cleaning. No dry sweeping shall be permitted."

15 Do you know if directives were issued in 1966, based on that?

A. No, I don't. I didn't get up to the industrial branch until May 1, 1970, and then that's when I took over.

Q. Right.

A. So both of these reports were...

20 Q. Were before your time.

A. ...before my time. But I would anticipate that they would be, yes.

Q. Well, if you notice on...

A. Within the scope of the particular legislation at the time, right?

25 Q. Okay. That brings me to a question, before I go on to the second page of 1970, is that you had written guidelines for controlling exposure to asbestos for some time. I saw them as far back as 1972, I think.

A. 1969, I think, the first one was...

Q. Right.

30 A. The data sheet from OHB, yes.

Q. Data sheet, right.

Part of the data sheet, did it suggest that dry sweeping was an inappropriate housekeeping...?

A. I think it did. I can check that.

Q. As far back as 1969?

A. Yeah, I think so. I think it's always been that.

Q. What about clothing, removing clothing at the workplace so you didn't take it home?

A. I don't think that was in then. I'm not sure. I can't corroborate that.

Q. Okay. I just want to draw your attention in 1970, and I won't pursue it since you weren't part of the ministry at that point, but on page two, they are still dry sweeping.

A. I don't know that you can say they're still dry sweeping, inferring in 1966 they started dry sweeping and they kept dry sweeping all the way through to 1970.

Q. How are they in the report?

A. One of the problems we have in industry is that supervision, and even personnel, change. What happens is that things that were thought to be taken care of, when some new guy comes along he gets a brilliant idea, innovation being, you know, the thing that people do, and he thinks this is all right until someone tells him it's not.

So I don't think this is...from the information which you have given me, I cannot conclude that they started in 1966, brushing, and didn't stop, and kept going.

Q. Well, I can...

A. By the way, this is our experience in life. As you know, one of the...carbon tetrachloride has been a problem since Adam was a boy, because everybody finds it's a great solvent, they discover that about every four or five years, and the guy that discovers it forgets that there is a problem with it.

A. (cont'd.) So this could be...I don't know...it could be the same thing.

5 Q. But in fact the dry sweeping continued until 1977?

A. It was going on in 1977, according to the information you gave me. I don't see anything that indicates that from 1966 to 1977, they dry swept forever and ever without being checked, and I have no way of checking that our inspector checked it out. I assume he did.

10 Q. 1977 is in the union brief to the Commission. Can I...I have one more report that I would like to ask about, and this is more recent.

MR. LASKIN: Can we identify these reports for the record, just to keep our documents straight?

15 Linda, is the first bundle of documents all...?

MISS JOLLEY: They are all contained in the UAW... there are just two, there's a 1966 and 1970 memo from Hugh Nelson.

MR. LASKIN: All right.

MISS JOLLEY: Concerning Bendix.

20 MR. LASKIN: Let's call the 1966 memo as exhibit sixty-one, and the 1970 memo exhibit sixty-two, and then the 1981 memo as exhibit sixty-three.

EXHIBIT # 61: The abovementioned document was then produced and marked.

25 EXHIBIT # 62: The abovementioned document was then produced and marked.

EXHIBIT # 63: The abovementioned document was then produced and marked.

30 MISS JOLLEY: Q. The 1981 memo was January 21st,

Q. (cont'd.) from a Mr. Hussain.

A. Yes.

Q. And it's...

A. I only have a partial report here, two pages.

Q. Sorry, yes. There are two other pages. I

didn't want to...

A. That's all right.

Q. I just want to address two things in the second page.

This is concerning Hayes/Dana in St. Thomas, a firm that deals with asbestos for gaskets. I would like to draw your attention, given that dry sweeping was certainly discouraged as far back as 1969, to number four, and it's of some concern that in January, 1981, there are plants in Ontario that are still dry sweeping asbestos.

A. Obviously, that was why the occupational health people were concerned and they wrote the report.

Q. But what would have happened between 1969 and 1981, that they are still dry sweeping, if that was to be discouraged, in your guidelines?

A. The only information I've got here is that they were dry sweeping at the time he visited them on November 27, 1980. That's the only information that's on this report.

Q. Right. But isn't it of concern to you that in 1980, they were still dry sweeping in one plant in Ontario?

A. Of course. That's why we are in the business- It's not a case of fixing things up once. It's again and again and again and again and again.

That's the way it is always going to be, let's face it. You know, we do not have an appreciation of disaster to the extent that we should have in the health and safety field.

That's a quotation, by the way, I didn't make it up.

A. (cont'd.) I read it in a book yesterday.

Q. May I draw your attention to number five? As late as 1980, these workers were still taking asbestos home on their clothes, on their workclothes?

I just draw your attention to this because it worries me that we keep thinking that these things are...just went on in the past.

A. That's...I would suggest to you...that that's something we shouldn't do. Our presumption should be that it will reoccur, and thus take the necessary action to do it, and certainly that's what would arise from here, and we hope that our staff will keep after them again and again and again.

Q. Do you know for a fact that they issued orders over these comments?

A. I have not checked this file, but if this was sent then the system requires that they do it.

It's a decentralized system in which, you know, it's handled on an exception basis, when it gets to me.

Q. I have one last question, and I'm having trouble phrasing it.

DR. DUPRE: Is it out of this memo?

MISS JOLLEY: Do I have it?

DR. DUPRE: No, no. Is your last question out of this memo?

MISS JOLLEY: Oh, no. I'm sorry.

DR. DUPRE: Well, before you phrase it, and I apologize, Mr. McNair, you may not be the first to answer this, but I have just noticed, reading this memo, number seven: the company has recently introduced a medical surveillance program.

Now, as I would understand it, if we were, if we had asbestos workers involved here, presumably they would have been under the medical surveillance program of the Ministry of Labour?

THE WITNESS: I would...wait a minute...you've already got this...

DR. DUPRE: Yes.

THE WITNESS: ...source of information...

DR. DUPRE: But I don't have it with me on the table.

THE WITNESS: I happen to have it, so you can probably get up and see...yes. It was only St. Thomas.

DR. DUPRE: So they are already...

THE WITNESS: It was already in at that time.

DR. DUPRE: Now, when I see something like number seven, that they have recently introduced a medical surveillance program, do I take it that that means that the company is now doing its own medical surveillance and that they at that point leave the medical surveillance program of the ministry behind?

THE WITNESS: I guess Dr. Pelmear's the guy there.

DR. DUPRE: Yes.

MISS JOLLEY: I think that's the indication and I think a lot of firms are moving into medical surveillance because they know that these regulations are coming in.

THE WITNESS: Yes, that's probably what it is.

MISS JOLLEY: I know Hayes/Dana has lead as well. I think this plant has lead, I'm not sure.

DR. DUPRE: Okay. Well, maybe...if you will allow me, Mr. Lederer, perhaps Mr. Gladstone can give us some information on this when the time comes.

I'm just...I'm still trying to piece together a few things from Dr. Pelmear's testimony, I guess, in particular, yesterday.

And as I take it, of course, the medical surveillance program of the ministry is a service to employers. As I take it again, an employer who chooses to provide that service himself,

DR. DUPRE: (cont'd.) rather than take it from the ministry, may do so.

5 Where I, at this point, start to get lost in some fog and in some mist, has to do with the following: If an employer starts to provide his own medical surveillance service, does the medical surveillance part of the Ministry of Labour not automatically inform itself of the kind of surveillance program that the employer is seeking to substitute for their program?

10 THE WITNESS: I thought that was the objective of that paragraph seven, that they have introduced one of their own which is running in parallel with the existing medical one with the ministry, and that the consultant should go out, check it out and at that point I would guess that they would, you know, check up on it until such time as it was operating at a level.

15 We've done that with many things which are not law. You know, we know things are coming up, we get people started on them, so that when the time comes, when they are released and freed, that they will already be operating at the level expected.

20 It's not an unusual way to go, Doctor. It's a very good way, in my view.

DR. DUPRE: I guess what simply threw me off, you see, about number seven is that I read the first sentence and it says the company has recently introduced - so we've got a medical surveillance program that is in place, recently introduced.

25 Then the report draws attention to the following: That it would be worthwhile to have a medical consultant from the medical service visit the plant and advise on that program which presumably was recently introduced, and I would have thought that the linkage between the medical surveillance people in the medical service branch would have automatically been taking place
30 at the time the medical surveillance in the plant, run by the

DR. DUPRE: (cont'd.) employer was being introduced.

THE WITNESS: Well...

5 MR. LEDERER: We can probably sit here and presume
as to what happens. I think it might be best, Mr. Chairman, if
you will oblige us. Mr. Gladstone will have an opportunity to
discuss this issue...

DR. DUPRE: I'm sure he will.

10 MR. LEDERER: ...with Dr. Pelmear, and if we could
raise it through his evidence.

DR. DUPRE: And, of course, not take up any more
time, and he can provide us that information whenever he comes,
at such other time as is suitable. Yes.

MISS JOLLEY: In his four-day testimony.

15 MR. LEDERER: Mr. Gladstone...if Mr. Gladstone
hasn't been recognized as having encyclopedic knowledge already,
he certainly will have by the time he gets here.

MR. LASKIN: I would say after the sixth day of
testimony.

DR. DUPRE: Sorry, Miss Jolley.

MISS JOLLEY: No problem, no problem.

20 MR. LEDERER: Mr. Gladstone raises this possibility
with me...I don't know if Miss Jolley would have a concern...
obviously if Mr. Gladstone provides you with an answer, it will be
putting into words something that Dr. Pelmear tells him, and
that means that we will be going through another source and having
25 it perhaps just as a passage from ear to ear.

I'm just wondering whether you might prefer, as
you suggested with Dr. Vingilis, some form of written answer
directly from Dr. Pelmear. It's whatever you want.

DR. DUPRE: Oh, I think that would be fine, too.
No problem.

30 MR. LEDERER: Can I take it you will leave it to us
to determine which is the most...?

DR. DUPRE: Absolutely. We know we are in good hands, counsel.

MR. LEDERER: Thank you.

MISS JOLLEY: Q. Since we were giving great plugs to the Luce and Swimmer study this morning, I wonder if you have read the workers' attitudes about health and safety in three asbestos brake manufacturing plants?

THE WITNESS: A. I speed read through the whole thing and got a gist of what they were talking about.

Q. Right, right. I want to draw your attention to the attitude of the three plants towards the government inspectors, and I'm not going to pursue it but one of the plants particularly, and that was Certified Brakes, clearly did not share a majority view from the other two plants that government inspectors cared most about workers. They had few people who expressed that opinion, whereas fifty-five percent of the workers expressed the opinion that the government inspectors care most about management, and forty-five percent expressed the opinion that they cared most about themselves.

It is of some concern because this reflects, I think, what the Steel Workers who represent those workers have indicated, and that is an attitude on behalf of the ministry inspector in that particular plant.

A. Now, you just changed your terms of reference there. What the people feel about inspectors, right?

Q. Right. The Luce and Swimmer one was an expression of the workers who were interviewed.

But I think that the concern is that one inspector particularly had not been particularly expressed...I don't know how to say it, but it has been alleged that he said those people that work with fish smell like fish, those people that work with asbestos smell like asbestos.

A. Not again!

Q. Now, I've heard from four sources who overheard the inspector say that.

A. Well, the report I have is from the inspector who was accompanying him, who flatly denied that the expression was ever used. Not the one who was alleged to have made it, but the one who was there. You can pick which one you want to believe.

These are the kind of things which, if they happened, shouldn't have happened. I say that, but I'm not making any suggestion that they did happen, because the evidence which I have is that one group says it happened and the staff who was with him said it didn't happen.

That's all I can say. I am not prepared to make a judgement based on either of the statements. It's not in any way anything which would help to create a solution to any problem.

MR. LEDERER: Mr. Chairman, I wonder if I might make a comment? I made a couple of comments yesterday, all to no avail, and I really make this observation only because I think it may be useful to have it on the record.

One of the things that this last exchange points out is something I have been aware of for a while now, is that there is a tendency, I think, and I can't be sure because I simply can't have the command of what happened last summer, that the others here do, but there is a tendency to ask questions based on facts which, so far as I am aware, are not in evidence here, and there is no way of testing them.

I appreciate the fact that given the way this is operating, it is in the nature of the game and I'm not...as I tried not yesterday, objecting. I am simply making an observation that's of some concern to me, and I think this particular exchange just points up the problem.

DR. DUPRE: Well, I think, you know, having been

5 DR. DUPRE: (cont'd.) here all the way through, I can share with you the following, counsel: That the story about that celebrated individual, whoever he or she may have been, who was an inspector at that time and who made that remark, is part of the lore of this Commission that goes all the way back to, I think, one of the very first open meetings we ever had.

So that one is with us indefinitely.

10 I would like, though, to now make the following observation, for what it's worth, and our witness may or may not choose to pick it up. If Miss Jolley wishes to comment, I would be happy to hear that, too.

15 As I read Luce and Swimmer, I believe that we are looking at a problem that is far more profound than anything that can be wrapped up around a personality of any particular government representative, whoever that person might be.

20 Luce and Swimmer are the same two individuals who, of course, conducted the survey of all three plants. At the Certified plant, of course, they found that the workers were so reticent to communicate, that they had such suspicions of anything remotely suggesting government, authority, what have you, that indeed at Certified Brake, among other things, Luce and Swimmer had to depart from their whole sampling approach. And of course they wound up giving us such information as they could on the basis of whoever was willing to talk to them.

25 Of course, I take this as bringing home to us a real-world problem that is there whether we like it or not, but that certainly has to be shared, I think, by management, by the unions and very much by the government, in that you have here an employee population, a substantial proportion of whom are culturally disposed to, of course, have an innate fear and distrust of government, and there it sits, for what it's worth.

30 But it does suggest to me at this point that the

5 DR. DUPRE: (cont'd.) fact that this study has identified one such situation, and of course as we are only studying one industry, there are probably other examples as well, I take it that what we are looking at here is something that we all have to progress on our learning curves about - namely, that there are and will be found in certain workplaces in Ontario, employee populations that I think need to be approached...and this is going to be over a long period of time...by all concerned, 10 in a special way.

Is that a fair observation on the basis of at least my reading of Luce and Swimmer? And I know you have read it closely, Miss Jolley, so I...

15 MISS JOLLEY: I think I would just be concerned that we automatically jump to the conclusion that because they are of a particular ethnic origin that therefore they would have that perception of authority.

20 I mean, I do share a suspicion that that might be so. I wouldn't like to say that as a...but I do think it indicates a need for the ministry to be very...to perhaps approach those kinds of plants quite differently.

And I take, as well, that I think the union has obligations as well, for education.

25 THE WITNESS: In the brief review which I had of this document, I did not come across any new information of which I was not already aware, but I agree with Miss Jolley's reservations. I would not think that this was an ethnic problem, despite the fact that some people, you know, have put it that way. I don't think that's the source of the problem.

DR. DUPRE: I wouldn't say so at all myself...

THE WITNESS: I wouldn't be definitive about it.

30 MISS JOLLEY: Oh, I'm sorry.

DR. DUPRE: ...as very much a problem that arises

DR. DUPRE: (cont'd.) from the kind of political regime that some of us recently have lived under.

THE WITNESS: It also arises from whether...it arises at times from individuals who are in the plant. When individuals change, so the whole...but yes, it will not be changed over night and it will be a process, and it is a process that has been going on, which will go on, I'm quite sure.

MISS JOLLEY: I have no further questions.

DR. DUPRE: Mr. Lederer?

MR. LEDERER: Thank you, Mr. Chairman. I just have one question just to clarify something which I think may be self-evident, but I would like to have it on the record.

CROSS-EXAMINATION BY MR. LEDERER

Q. Mr. McNair, very early on in her questions, Miss Jolley was asking you about how the worker can be assured that he would obtain information. You said on one occasion, if they don't get it they can come to me.

Do you recall saying that?

A. Yes.

Q. All right. Then I think you said a little bit later on that, failing anything else, I will give it to them.

A. Yes.

Q. What interests me is, when you say 'me' and 'I', are you thinking of yourself in the position which you held until ten weeks ago?

A. Oh, absolutely. As director.

Q. So 'me' and 'I', in the context of today's world, would be Mr. Melinyshyn?

A. Or any of the other directors would do.

Q. Or anybody else...

A. I don't know whether he would make the same

A. (cont'd.) commitment, but I know that I did when I was director.

5 Q. But what I'm really driving at, you are not referring to yourself in your present role when you use those words?

A. Yes. Well, you clarified that. It's quite clear. I am no longer the director of that branch, and as such that authority does not reside in me. But I said, I was referring to what I did tell them. I was not referring to what I would do now.

10 Q. I understand.

MR. LEDERER: Thank you, sir.

Thank you, Mr. Chairman.

DR. DUPRE: Mr. McNair, I wonder if you could bear with me for a few questions that I have.

15 Your initial eight years in the ministry were spent, of course, starting the construction safety branch from scratch. You then went to the industrial safety branch, and of course in that branch you would have found in place out there in industry, whatever number...and I understand they were substantial... of joint management/labour committees existed prior to the passage of the 1978 legislation.

20 Now, let me put it to you this way. Coming in as you did, from construction, where of course the very possibility of ongoing joint committees is much more difficult, into the industrial safety branch, did you find that this made the whole job easier, more managable, to be in a situation where now you are in charge of inspecting fixed place industry in which any of a number of firms had joint committees?

25 THE WITNESS: I think you are asking me was it easier to run the industrial branch than the construction branch. The answer is clearly no, because the construction branch deals with some, what, between a hundred thousand and two hundred thousand people in their client group, whereas the industrial

5 THE WITNESS: (cont'd.) branch, up until recently, was over the million and a half, with about fifty or sixty thousand industries - all of a variegated...but fortunately, in the first five years or six years...first five years...I was with the ministry, we were really attached to the industrial sector. It was only in 1962 I went to construction.

10 The changeover to industrial was really a return to the same field I had been in originally, so I had some understanding of it despite the fact that some of the inspectors at the time thought I must be only knowledgeable in some construction part.

15 But yes, there were a few...and I don't think it was relatively few...health and safety committees that were voluntary in nature, in existence. Nothing like the numbers which exist now.

20 This was a promotion of the Industrial Accident Prevention Association, and of course we also promoted the whole idea, again, because it was part of the ministry policy of openness and communication, and we had suggested that committees were a good idea from everybody's point of view, and there were a number which were created in that mode.

But, the bulk of the committees were done afterwards, and the first thing we did when...

DR. DUPRE: By afterwards, you mean...

25 THE WITNESS: After the 1978 Act. And what we did is, we got a printout of all those that had over twenty, and went to work on them, and put an item into our reports that would indicate the kind of committee they had and whether it was legislated.

30 The legislated committees number somewhere in the order of about, oh, sixty-three, sixty-four hundred, plus... it's up in that order...that ninety-nine percent that Walter

THE WITNESS: (cont'd.) was talking about this morning.

Now, the reason that we say ninety-nine percent plus is very simple. There is a figure called twenty, and that goes up and down. Like, people have twenty and then they don't have twenty, so there is that.

DR. DUPRE: You say there are about sixty-three hundred to sixty-four hundred committees now in existence?

THE WITNESS: Right.

DR. DUPRE: On account of the legislation?

THE WITNESS: Yes.

DR. DUPRE: Would you have any kind of a ballpark estimate, would it be a quarter, a third, a half, that, say, had an existence prior to 1978, of those sixty-three hundred?

THE WITNESS: I have no way of making any reasoned estimate of it. I really couldn't tell you. We did not input that information into the computer.

It was...it would be on file somewhere, you know, but to find it, make it retrievable, would be beyond anything... I know of no way of getting it. The information was just not coded into the computer until we went after the legislated committees.

So that's why it could not come out...because you only get out what you put in, and we didn't put it in at that time. We had to create a new system.

When the system was first set up, there was only a limited computer capacity, and the system was built-in to that limited computer capacity. When the computer became bigger, we had the opportunity to expand it. But it took time and it took, you know, a need to be shown and then it took time to get the raw information in.

But it was very quickly brought up from the low

THE WITNESS: (cont'd.) figure we had on record.

5 It mounted very quickly, within a matter of about...oh, within a year. And that means that we were getting round to companies which were...ordering the committee and then going back and confirming that it was there.

So within the year, we had confirmed the existence of over the ninety-nine percent, which is really a hundred percent.

10 DR. DUPRE: And from a kind of front-line inspector's point of view, since your subordinates are such front-line inspectors, did you get an impression from the early years of the joint committees, the legislated joint committees, that they made life easier for inspectors, or perhaps simply, on the other hand, challenged them in a different way?

15 THE WITNESS: No, I think one of the things we had to do with the committees was to try to let them develop in their own way, without letting them just do nothing.

20 In other words, it's that point of balance of directing them to be in this format, or let them find their own format of operation and see if it works, because if they set up the system and they want it to work, it will work.

As you know, systems don't work, people make systems work. If they wanted it to work, it would work even if it was a bad system.

25 But if it's their system, it will work better than one that is imposed upon them. But on the other hand, if it wasn't working, at that point we would then get in.

30 But the time was to get them started and allow them a little time, and that's the time we have arrived at now. They've had their little time. They can now be analyzed. But up until now, I doubt if anybody could make a conclusion on how these committees are actually working.

They might have individual ones...and by the way,

5 THE WITNESS: (cont'd.) they operate in many different modes and at many different ranges, because they operate in individual companies and with individual members.

Even, as I say, the change of management, the change of supervisors, this can change the way things work.

10 DR. DUPRE: A very broad question, and really it's in quest of a reflection based on your experience, more than anything else, as you well appreciate, because I know you have followed the life of this Commission on and off, there are a lot of parties out in Ontario that are mad as wet hens about different problems as they perceive them in this field. But as a number of labour people, in particular, have put it to me, when all is said and done, they put the following proposition to me: They say, you know, the legislation here isn't bad, but they say, 15 the problem is it's not enforced.

Are you aware of that perception?

20 THE WITNESS: Yes, I think so. It has been said to me on quite a number of public occasions. I think you told me you had heard or saw the record of the Kitchener thing. I think it was said up there.

Yes, that perception has been, you know, made clear, that they have that perception.

I was also at the Windsor thing when Colin Lambert made his perception clear. Whether that perception is accurate, well, that's a different thing altogether.

25 DR. DUPRE: On the assumption that it's inaccurate, what do you think has to be communicated to change it?

30 THE WITNESS: Well, I think, quite frankly, that if we do our job honestly and keep doing it honestly, the penny will eventually drop, that that is the way the job...if there is any suggestion that in some way it is a biased operation, or has been in the past, that is totally inaccurate.

5 THE WITNESS: (cont'd.) Our whole program of indoctrination emphasizes that we recruit both labour and management representatives, and I should tell you that I can refer you to one particular person who, it was alleged, was management-oriented and had been, you know, biased in favour of management, happened to have been recruited from the shop steward at the plant and he was supposedly biased in favour of management.

10 The perceptions that are around are very strange at times. All I can tell you is that the activities of the branch are carried on both by the people recruited from labour and the people recruited from management, and in a completely unbiased way.

15 And I think it has to be that way, because you always figure that if you can be smart enough to bias it, there has got to be somebody smarter than you out there who can bias it the other way.

20 So from that point of view, it would be a stupid thing to do. Nothing more. And it just doesn't exist, but it's very difficult to get it across...and partly that's because we differ at times, and their recollection is that we differed, and that means that we are biased because we don't agree.

How you get that over to them, I think, is simply by keeping on behaving honest and doing a professional job.

25 But I have letters from one employer, public employer, saying that one of our officers had to be biased because he used to be with the union. I wrote back and said, I'm sorry, but that's not the way our branch operates. I never heard any more from him, and I'm quite sure he has still got the same opinion.

30 So yes, it comes from both sides, that way. But I feel that our officers do...I can't think of any way they could do otherwise, because it would be pretty obvious awful quick.

5 THE WITNESS: (cont'd.) But that perception is
there, there's no doubt about it. And once it's there, you can
guarantee it will be dragged out to the next Royal Commission
on asbestos after you are long gone, Dr. Dupre, and it will be
the same story. I guarantee that fish and fish will be going for
the next hundred years, because Mr. Lambert brought up that, you
know, it means what it says and it says what it means, and I
just checked the other day and that comment was made in a talk I
10 gave in 1973, and he says I was still saying it in 1981, 1982.
So it will go on forever.

15 DR. DUPRE: Well, that's exactly what brings me to
my last question, Mr. McNair. Royal Commissions have materialized
in this area from time to time, and they have made various
recommendations - all intended to be of assistance in terms
of the objective, which is greater occupational health and safety.
We are the latest in that line, and my last question, really, is
one that I can't resist asking because you have been in the
ministry for twenty-five years, you have headed, over a substantial
portion of your time there, two of the most important inspectional
20 branches in the ministry.

Dupre →
25 All right, we are the Commission of the moment,
Mr. McNair. On the basis of your storehouse of experience, are
there one or two things in particular that you think it might be
helpful for a Commission like this to address that would simply
make it easier, more effective for the branches that you know so
well to carry on with their inspectional jobs?

What would you like us to recommend?

30 THE WITNESS: I think the one element of all this
thing...and again, I'm probably on record and it's not something
new...the one element which has in it the hope for the future
was codified and given its name by Dr. Ham. Now, he put the
name on it, the name which became a useful communication - the

THE WITNESS: (cont'd.) internal responsibility system.

5 That, and any of the techniques of ensuring and being supportive of that, that system must work. It's not a case of anybody saying it doesn't work. It's absolutely an essential element in the success of any accident-prevention, health-protection mode that the internal responsibility system must work.

10 Now, if one part of that system does not operate in its, you know, in its decent way, that is no excuse for the other part not doing their bit and not communicating the problems they have to the ministry authorities who could do something about it.

15 Anything which detracts from the communication of information should be frowned upon completely.

There is one thing happening just now, for instance, that we ask at the end of our operation, the status report which we get during our inspections, we ask - have you any further concerns.

20 Now, there are some people who are starting to parrot a phrase, and that's what it's doing, they are parroting this phrase - they are saying I cannot do it because I haven't got enough education, I haven't got enough inspection time, and yet all we are asking them is, do you know of anything. That's all we are asking. Do you know of anything.

25 But the answer we get is this parrot information, right? I...you know, I have not had enough education and have not had enough inspection time to be able to formulate this stuff.

30 Now, that kind of attitude has got to be stopped. There has got to be a communication open and clear, supportive of the internal responsibility system. That negative crying has been one of the things which is, I think, indicative of a

5 THE WITNESS: (cont'd.) bad posture, and similarly in the case of management, they have got to realize that we are not dealing in the days where you run things all on your own and put it into operation. I think most of them realize that. There has to be communication beyond what the law says you have to do.

10 If that's not there, if we simply go for the law, we are going to fail on occasion. It's like trying to throw something a hundred yards exactly. You're going to be plus and minus. You'll be the same thing...if your only objective is to be there, you're going to fail on occasions.

15 What I'm suggesting is that the very thing which I talked about in 1980 at the IAPA, and which you have a copy of, saying look, you've got to go for higher than what the law requires, you've got to go in this thing, that decent people do it.

20 That has been a successful promotion. Not totally successful, and it never will be totally successful, but it has been successful to an astonishing degree. It really would surprise you just how many decent people there are on both sides of the fence.

No, I take that back. It won't surprise you. But they are there. It doesn't surprise me, and I know there is no reason to suppose it would surprise you.

25 But that's the crux, this relationship that has... internal, this communication, this telling people, that's getting out, and timely...not wait. If you ask for something and you don't get it, go to the next step up and say I didn't get it. So many things we've had where people have said to us, well, I asked so and so for it and I got a problem.

30 If they come to us, we've been able to solve it just be walking down and saying, where is it. "Well it hasn't gone out yet". I want it now. And jump the system.

5 THE WITNESS: (cont'd.) The system is meant to be broken for cause. The system is made to be speeded up, and all these speeding up things are there, and if the internal responsibility system is working, if people are supportive and communicate the problems they are having, they can be dealt with and the branches would be able to go ahead and do it.

10 I can think of nothing more than saying get on with letting people know what they have to achieve, which is the production of the regulations. Let them know what it is they can be punished for, because you should let people know what they can be punished for before they are in fact put in jeopardy.

15 And also, point out that despite what the law says, the real solution is the inter-relationship between the people in the plants, and it can be done, but it will take time and it will take goodwill, and it will take risks. It will take...people will have to take the risk of failure for the other party to respond.

If they don't take that risk, then it won't happen.

DR. DUPRE: Mr. Laskin?

MR. LASKIN: I don't think so, Mr. Chairman.

20 DR. DUPRE: Well, Mr. McNair, may I thank you most warmly for having come and testified this afternoon.

We now rise until eleven o'clock tomorrow morning.

25 THE INQUIRY ADJOURNED

THE FOREGOING WAS PREPARED
FROM THE TAPED RECORDINGS
OF THE INQUIRY PROCEEDINGS

Edwina Macht
EDWINA MACHT

